

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

RUBEN BELLO,

Plaintiff,

vs.

DHL EXPRESS (USA), INC.,
a Florida Company,¹

Defendant.

Case No.: 22-cv-23005-DPG

**DEFENDANT’S REPLY IN SUPPORT OF PARTIALLY
UNOPPOSED MOTION FOR LEAVE TO AMEND AFFIRMATIVE
DEFENSES AND INCORPORATED MEMORANDUM OF LAW**

Defendant, DHL Express (USA), Inc. (“DHL”), hereby replies to Plaintiff, Ruben Bello’s (“Bello”) Response in Opposition to DHL’s Partially Unopposed Motion for Leave to Amend Affirmative Defenses and Incorporated Memorandum of Law (“Response”) [D.E. 22].

A. DHL’s Motion to Augment its After-Acquired Evidence Defense is Unopposed.

DHL initially confirms that its Motion to augment Defense No. 39 is unopposed. Defense No. 39 is DHL’s after-acquired evidence defense and generally was preserved in its original Answer and Affirmative Defenses [D.E. 5]. However, based on the information elicited during discovery, DHL now moves to bolster the defense with specifics. Plaintiff asserts no opposition. Accordingly, at minimum, DHL’s motion should be granted as unopposed as to Defense No. 39.

B. DHL Does Not Seek to Amend Deadlines from the Trial Order.

Bello argues that DHL must meet Federal Rule of Civil Procedure 16(a)(4)’s “good cause” standard for amending the Court’s Scheduling Order Setting Civil Trial Date and Pretrial Schedule

¹ DHL is erroneously classified as a “Florida Company.” DHL is an Ohio corporation.

(“Scheduling Order”) [D.E. 10] because the “deadline to amend pleadings” was on December 9, 2022. However, the referenced deadline is to amend the complaint and to join additional parties only. The Order is silent as to other amendments. The parties jointly submitted a proposed Order using this phraseology. [D.E. 9]. Indeed, some defenses, such as DHL’s after-acquired evidence defense, do not ripen until the parties engage in discovery and new information is learned. The present Motion is timely, with Federal Rule of Civil Procedure 15 providing the appropriate liberal standard. DHL does not seek to modify any of the deadlines set forth in the Scheduling Order. If the Court in fact views DHL’s Motion as untimely, DHL stands down on this Motion except as to the agreed augmentation of Defense No. 39.

C. DHL’s Proposed Amendment Will Not Prejudice Plaintiff.

Plaintiff makes an unsupported argument that he will be unduly prejudiced by DHL’s proposed amended Defense No. 40. In fact, whether DHL asserted an exhaustion defense in its initial Answer [D.E. 5] would not have made a difference. DHL terminated Bello on July 1, 2020. “For a charge to be timely in a deferral state such as Florida, it must be filed within 300 days of the last discriminatory act.” *E.E.O.C. v. Joe’s Stone Crabs, Inc.*, 296 F.3d 1265, 1271 (11th Cir. 2002). Bello had until April 27, 2021, to file a Charge of Discrimination. He initiated this action in August 2022. [D.E. 1]. Even if DHL had included its exhaustion of administrative remedies defense in its September 2022 Answer [D.E. 5], Bello would not have been permitted to timely file a charge alleging disability discrimination. Therefore, DHL’s amendment will not prejudice Bello in any way.

For the foregoing reasons, DHL’s Partially Unopposed Motion for Leave to Amend Affirmative Defenses and Incorporated Memorandum of Law should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed on March 20, 2023, with the Clerk of Court using the CM/ECF system, which will send e-filing notices to all counsel of record listed below:

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